IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG.) NO.2344 OF 2004

Union of India & Ors. ..Petitioners.
Vs.
Dr. B.V. Prasad Reddy & anr. ..
Respondent.

....

Mr. Suresh Kumar i/b T.C. Kaushik for the petitioners.
Mr. S.K.Aney i/b Sandip Marne for Respondent No.1.

....

CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J,

13th September, 2004.

P.C. :

1. The First Respondent belongs to the 1993 batch of the Indian Revenue Service and has presently been posted as Deputy Commissioner of Income Tax at Mumbai. The next promotion in the hierarchy is to the post of Joint Commissioner of Income Tax. On 20th October, 2003 an order was issued by which 90 officers came to be promoted as Joint Commissioner of Income Tax; 66 officers junior to the First Respondent were promoted. Aggieved by the fact that he was not promoted, the First Respondent initially submitted a representation and thereafter moved the Central

Administrative Tribunal. By its order dated 8th April, 2004, the Tribunal directed the Respondents before it including inter alia the Union of India to convene a review Departmental Promotion Committee to consider the case of the First Respondent herein by ignoring the ACRs for the years 1999-2000 and 2001-02 and if found suitable, grant him promotion from the date on which his immediate junior has been promoted.

2. For the years 1997-98 and 1998-99 the First Respondent was given the grading of 'Very Good' both by the reporting officer and by the reviewing officer in respect of his ACRs. The grading of 'Very Good', it is undisputed, fulfills the benchmark for promotion. However, for the year 1999-00 the grading which was given to the First Respondent was 'Good'. For the year 2000-01 the First Respondent was graded as “Excellent” both by the reporting and by the reviewing officer. Again for the year 2001-02 the grading was “Good”. Thus for the years 1999-00 and 2001-02, there was a substantial decline in the grading, the effect of which was that the First Respondent would not meet the benchmark requirement for those two years. Admittedly, the downgrading in the ACRs was not communicated to the First Respondent.

3. The Tribunal has relied upon several judgments of the Supreme Court in which it has been held that though a grading of "Good" in the ACR May not per se be adverse, such grading would nevertheless assume the character of an adverse remark where the benchmark required to qualify for empanelment for promotion is very good or of a higher order than what has been allowed. The Tribunal relied upon the judgment of the Supreme Court in **S. Ramchandra Raju v. State of Orissa** (1995 SCC (L&S) 74 and the subsequent judgment in **U. P. Jal Nigam v. Prabhat Chandra Jain** ((1996) 2 SCC 363). In **U.P. Jal Nigam** the first respondent was downgraded and the contention of the petitioners was that the downgrading of the entries in confidential reports could not be termed as adverse entries so as to obligate the employer to communicate the same to the employee. This argument was turned down by the High Court. The Supreme Court held that even a positive confidential entry in a given case can 'perilously' be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. This decision was followed by a Division Bench of this Court in **Dr. Binoy Gupta v. Union of India** (2002(3) ATJ 7). That again was a case where the petitioner

was not selected for promotion to the post of Chief Commissioner on the basis of an ACR where a downgrading of the entries from 'very good' to 'good' in successive years was not communicated. The Division Bench held that this would vitiate the proceeding.

4. In the present case, the Tribunal has followed these settled principles which emerge from the judgments of the Supreme Court which have been followed in decisions both of the Delhi High Court and of the Division Bench of this Court. The downgrading of the entries in the ACRs of the petitioner from 'Very Good' to 'Good' for the years 1998-99 and 1999-00 respectively and from 'Excellent' to 'Good' between the years 2000-01 and 2001-02 respectively is a matter of serious prejudice to the First Respondent since it would severely prejudice his claim for promotion to the post of Joint Commissioner of Income Tax. A downgrading of entry in such circumstances would result in an officer not meeting the benchmark requirement for the particular year and ought, in the circumstances, to have been communicated. Admittedly, no communication was made and the principles of natural justice were not complied with. In the meantime, the persons who reviewed the grading of the First Respondent below the benchmark have

ceased to be in service. Hence, the Tribunal observed that there is now no occasion to review the grading of the First Respondent below the benchmark once again.

5. In the circumstances, we are of the view that the reasoning of the Tribunal is consistent with the law laid down by the Supreme Court and the relief which has been granted in the terms already noted earlier, consequently does not fall for interference under Article 226 of the Constitution. The Petition shall, in the circumstances, stand dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.